

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. SAYLOR,

Plaintiff,

vs.

ALLISON, et al.,

Defendants.

1:21-cv-01285-NONE-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE
BE DISMISSED, WITHOUT
PREJUDICE, FOR PLAINTIFF'S
FAILURE TO OBEY COURT ORDER
(ECF No. 10.)**

OBJECTIONS, IF ANY, DUE IN 14 DAYS

Bryan E. Saylor ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. §1983. Plaintiff filed the Complaint commencing this action on August 24, 2021. (ECF No. 1.)

On November 2, 2021, the court issued an order requiring Plaintiff to pay the \$402.00 filing fee for this case in full, within thirty days. (ECF No. 10.) The thirty-day time period has now expired and Plaintiff has not paid the filing fee or otherwise responded to the court's order. Therefore, it will be recommended that this case be dismissed, without prejudice, for Plaintiff's failure to comply with the court's order.

In determining whether to dismiss this action for failure to comply with the directives set forth in its order, "the Court must weigh the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the

1 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639,
2 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

3 ““The public’s interest in expeditious resolution of litigation always favors dismissal,””
4 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
5 action has been pending since August 24, 2021. Plaintiff’s failure to respond to the Court’s order
6 may reflect Plaintiff’s disinterest in prosecuting this case or his inability to pay the filing fee. In
7 such an instance, the Court cannot continue to expend its scarce resources assisting a litigant who
8 will not resolve payment of the filing fee for his case. Thus, both the first and second factors
9 weigh in favor of dismissal.

10 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
11 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
12 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it
13 is Plaintiff’s failure to pay the filing fee for this case that is causing delay. Therefore, the third
14 factor weighs in favor of dismissal.

15 As for the availability of lesser sanctions, at this stage in the proceedings there is little
16 available to the Court which would constitute a satisfactory lesser sanction while protecting the
17 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions in this
18 circumstance are of little use, and given the early stage of these proceedings, the preclusion of
19 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
20 this case is without prejudice, the Court is stopping short of issuing the harshest possible sanction
21 of dismissal with prejudice.

22 Finally, because public policy favors disposition on the merits, this factor will always
23 weigh against dismissal. Id. at 643.

24 Accordingly, **IT IS HEREBY RECOMMENDED** that this case be dismissed, without
25 prejudice, for Plaintiff’s failure to obey the Court’s order issued on November 2, 2021.

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
28 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file

1 written objections with the court. Such a document should be captioned “Objections to
2 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
3 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
4 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
5 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: December 17, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE